

STATE OF MICHIGAN
COURT OF APPEALS

KATHLEEN FORSYTH, as Personal
Representative of the Estate of BARRY HUGH
FORSYTH, Deceased,

Plaintiff-Appellee,

v

DR. JOHN HOPPER, DR. ERIC WYNTON
AYERS, and AFFILIATED INTERNISTS CORP,

Defendants,

and

DR. JONATHAN EDWARD PASKO and
DETROIT RECEIVING HOSPITAL,

Defendants-Appellants.

Before: Hoekstra, P.J., and Neff and Owens, JJ.

NEFF, J. (*concurring in part and dissenting in part*).

I agree with the majority opinion that *Waltz v Wyse*, 469 Mich 642, 644, 650; 677 NW2d 813 (2004), is to be given full retroactive application under *Mullins v St Joseph Mercy Hosp*, ___ Mich App ___, ___ NW2d ___ (2006) (Docket No. 263210, issued July 11, 2006), and requires the holding that plaintiff's suit was not timely. However, I respectfully dissent from the result reached because I would remand this matter to the trial court for a determination whether the doctrine of equitable tolling applies on the facts of this case. *Mazumder v Univ of Michigan Bd of Regents*, 270 Mich App 42; 715 NW2d 96 (2006).

/s/ Janet T. Neff

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Wayne Circuit Court

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